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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

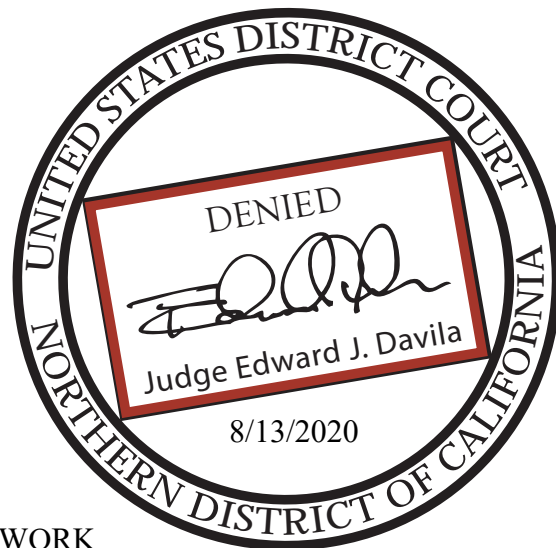
AMERICAN FEDERATION OF TEACHERS,
CALIFORNIA FEDERATION OF
TEACHERS, ISAI BALTEZAR, & JULIE
CHO,

Plaintiffs,

vs.

ELISABETH DEVOS, *in her official capacity*
as Secretary of Education, & UNITED
STATES DEPARTMENT OF EDUCATION,

Defendants.



Case No. 20-cv-00455-EJD

PLAINTIFFS' ADMINISTRATIVE
MOTION FOR LEAVE TO FILE
SURREPLY IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS
AND TO GRANT DEFENDANTS LEAVE
TO RESPOND

1 Pursuant to Civil L.R. 7-11, Plaintiffs Isai Baltezar, Julie Cho, American Federation of
2 Teachers, and California Federation of Teachers (“Plaintiffs”) respectfully submit this
3 administrative motion for leave to file a surreply to address Defendants’ Reply in Support of its
4 Motion to Dismiss [Dkt. 28] (“Reply”). Attached hereto as Exhibit 1 is Plaintiffs’ proposed
5 surreply.

6 In its Reply, Defendants rely heavily on two cases that were not addressed in their
7 opening memorandum of law. One case, *Maryland v. United States Department of Education*, __
8 F. Supp. 3d __, No. 17-2193, 2020 WL 3029315 (D.D.C. July 17, 2020), was decided after
9 Defendants’ filed their initial motion. An additional case, *Marino v. National Oceanic &*
10 *Atmospheric Administration*, __ F. Supp. 3d __, No. 18-CV-2750 (DLF), 2020 WL 1479515
11 (D.D.C. Mar. 26, 2020), was decided by the U.S. District Court for the District of Columbia
12 before Defendants’ motion was filed, but Defendants cite that case for the first time in their
13 Reply to rebut Plaintiffs’ asserted informational injuries as a basis for Article III standing.
14 Defendants’ Reply also makes additional arguments, and relies on facts not raised in their
15 opening memorandum of law. Consequently, Plaintiffs have not had a an opportunity to address
16 these arguments and facts.

17 Good cause exists to grant this motion. *See, e.g., Landmark Screens v. Morgan, Lewis &*
18 *Bockius*, No. 08-cv-2581 (JF), 2010 WL 3629816, at *2 (N.D. Cal. Sept. 14, 2010) (permitting a
19 surreply where an authority was cited for the first time in a reply); *Altavion, Inc. v. Konica-*
20 *Monolta Sys. Lab.*, No. 07-cv-6358 (MHP), 2008 WL 2020593, at *1 n.1 (N.D. Cal. May 8,
21 2008) (permitting a surreply where the reply “posed new arguments and relied upon cases which
22 had not been previously cited”); *Sharper Image v. Consumers Union of U.S.*, No 03-4094
23 (MMC), 2004 WL 2713064, at *1 n.1 (N.D. Cal. Feb 23, 2004) (considering a surreply in
24 response to arguments raised for the first time in defendant’s reply).

25 Plaintiffs’ counsel has contacted counsel for Defendants, who has stated that she
26 disagrees that issues other than the new *Maryland* decision warrant a surreply, but nevertheless
27 agreed to stipulate to Plaintiffs’ surreply on the condition that Defendants are given an
28 opportunity to respond. A Stipulation to Grant Plaintiffs Leave to File Surreply in Opposition to

1 Defendant's Motion to Dismiss and Granting Defendants Leave to Respond is attached hereto as
2 Exhibit 2. A proposed Order is attached hereto as Exhibit 3.

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4 Respectfully submitted,

5 Glenn Rothner (SBN 67353)
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12 By: /s/ Daniel A. Zibel
13 DANIEL A. ZIBEL

14 August 12, 2020

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Counsel for Plaintiffs